

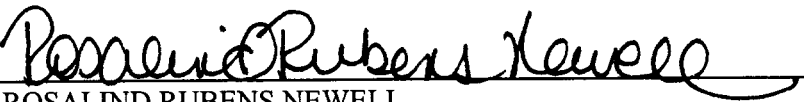
Entered - 07/06/00 - sb  
CL00L0403 - DIANNE C. MITCHELL

CLAIM OF: **INFORMATION SYSTEMS AND NETWORKS  
CORPORATION,**  
through its attorney,  
Norman H. Singer  
10411 Motor City Drive  
Suite 725  
Bethesda, MD 20817

00- *R* -1830

For damages alleged to have been sustained as a result of the termination of  
a contract on March 15, 1999 at 55 Trinity Avenue, SW.

THIS ADVERSED REPORT IS APPROVED

BY:   
ROSALIND RUBENS NEWELL  
DEPUTY CITY ATTORNEY

**DEPARTMENT OF LAW - CLAIM INVESTIGATION SUMMARY**

Claim No. 00L0403

Date November 1, 2000

Claimant /Victim INFORMATION SYSTEMS AND NETWORKS CORPORATION  
BY: (Atty) Norman H. Singer  
Address: 10411 Motor City Drive, Suite 725, Bethesda, MD 20817  
Subrogation: Claim for Property damage \$ not stated Bodily Injury \$             
Date of Notice: 06/23/00 Method: Written, proper X Improper             
Conforms to Notice: O.C.G.A. §36-33-5 X Ante Litem (6 Mo.) X  
Date of Occurrence 03/15/99 Place: 55 Trinity Avenue, SW  
Department Admn. Services Division:             
Employee involved            Disciplinary Action:           

NATURE OF CLAIM: The claimant alleges that its contract with the City was wrongfully terminated. The claimant has filed a lawsuit to resolve the issues raised in its claim.

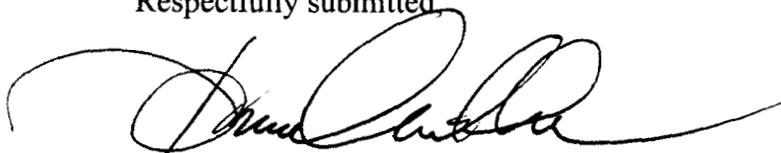
**INVESTIGATION:**

Statements: City employee            Claimant            Others            Written            Oral             
Pictures            Diagrams            Reports: Police            Dept Report            Other             
Traffic citations issued: City Driver            Claimant Driver             
Citation disposition: City Driver            Claimant Driver           

**BASIS OF RECOMMENDATION:**

Function: Governmental X Ministerial             
Improper Notice            More than Six Months            Other X Damages reasonable             
City not involved            Offer rejected            Compromise settlement             
Repair/replacement by Ins. Co.            Repair/replacement by City Forces             
Claimant Negligent            City Negligent            Joint            Claim Abandoned           

Respectfully submitted,



INVESTIGATOR - DIANNE C. MITCHELL

**RECOMMENDATION:**

Pay \$            Adverse X Account charged: 1A01            2J01            2H01             
Claims Manager:            Concur/date 11-01-00  
Committee Action:            Council Action

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ENTERED - 7-6-00 - SB  
00LO403 - DIANNE MITCHELL

June 23, 2000

**VIA FACSIMILE AND FIRST CLASS MAIL**

The Honorable William Campbell, Mayor  
City Hall  
68 Mitchell Street, S.W.  
Atlanta, GA 30335  
Fax No. (404) 658-7361

Robert Pitts, President  
Atlanta City Council  
55 Trinity Avenue, S.W.  
Atlanta, GA 30335  
Fax No. (404) 658-7551

Mr. Herbert L. McCall, Commissioner  
Department of Administrative Services  
City Hall  
68 Mitchell Street, S.W.  
Suite 3250, City Hall Tower  
Atlanta, GA 30335  
Fax No. (404) 658-7180

Susan Pease Langford, Esquire  
City Attorney  
City of Atlanta Law Department  
68 Mitchell Street, S.W.  
Suite 4100, City Hall Tower  
Atlanta, GA 30335-0332  
Fax No. (404) 658-6894

**Re: ANTE LITEM NOTICE PURSUANT TO O.G.C.A. 36-33-5**

TO: The Honorable William Campbell  
Robert Pitts  
Herbert L. McCall  
Susan Pease Langford, Esquire

*Mitchell*  
*06/24/00*  
*DM*

ATTORNEYS AT LAW  
10411 MOTOR CITY DRIVE  
SUITE 725  
BETHESDA, MD 20817

TELEPHONE: (301) 469-0400  
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EMAIL: [singerfirm@aol.com](mailto:singerfirm@aol.com)

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1730 K STREET, N.W.  
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# SINGER & ASSOCIATES

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June 23, 2000

Page 2

Pursuant to O.C.G.A. 36-33-5, this letter serves as Ante Litem Notice of the claims which will be asserted against the City of Atlanta ("the City") and Herbert L. McCall, Director of Administrative Services ("McCall"), acting within the scope of his employment, by Information Systems and Networks Corporation ("ISN").

O.C.G.A. 36-33-5(b) codifies, in pertinent part:

(b) Within six months of the happening of the event upon which a claim against a municipal corporation is predicated, the person, firm, or corporation having a claim shall present the claim on writing to the governing authority of the municipal corporation for adjustment, stating the time, place and extent of the injury, as nearly practicable, and the negligence which caused the injury. No action shall be entertained by the courts against the municipal corporation until the cause of action therein has first been presented to the governing authority for adjustment.

O.C.G.A. 36-33-5(b).

On March 4, 1999, ISN wrote McCall an ante litem letter pursuant to the aforementioned statute. On March 5, 1999 McCall replied to the letter by denying ISN's claim. On March 18, 1999, ISN filed suit against the City and McCall asserting, inter alia, the claims set forth in the March 4, 1999 letter.

Pursuant to the Ante Litem statute, ISN intends to pursue the following causes of action against the City and McCall:

## **For Breach of Contract**

By issuing a Blanket Purchase Order on November 28, 1998, the City and ISN entered into a Contract (the "FPO") delineating that ISN perform Citywide Year 2000 assessment and remediation. The FPO entitled ISN to perform the services set forth in

# SINGER & ASSOCIATES

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June 23, 2000

Page 3

the agreed-upon Statement of Need ("SON") at the rates set forth in the Statewide Contract for the period through May 31, 1999. Pursuant to those provisions, ISN could only be terminated from the FPO if it breached a material term or condition of the FPO or an event occurred which demonstrated a reasonable likelihood that ISN was either unable or unwilling to fulfill its obligations under the FPO. No event occurred which demonstrates a reasonable likelihood that ISN was unable or unwilling to fulfill its obligations under the FPO. The City identified no event. Further, the City has not provided the connection between a series of claimed factors regarding ISN's performance and those factors constituting a breach of any material term or condition of the FPO.

ISN was not provided any opportunity to cure any claimed breach or deficiency as required by the Statewide Contract.

ISN's performance under the FPO at no time constituted a breach of any material term or condition, and at no time was there any reasonable likelihood that ISN would be unwilling or unable to fulfill its obligations under the FPO.

The City breached the FPO with ISN in terminating ISN, in Atlanta, Georgia, for default effective March 15, 1999.

The FPO was governed by the termination provisions of the Statewide Contract. Specifically, ISN could only be terminated upon 15 days' written notice, provided, however, that the claimed breaching party (ISN) had the right to avoid termination of the

# SINGER & ASSOCIATES

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June 23, 2000

Page 4

contract by curing, to the satisfaction of the non-breaching party, the breach which was identified in the written notice within the 15-day period.

The City did not provide ISN the requisite 15-day notice. The City did not provide ISN any opportunity to cure. On March 1, 1999, McCall orally informed ISN that it was fired from the FPO. No reason was given.

On March 8, 1999, the City provided ISN a written notice dated March 5, 1999, informing ISN that on March 15, ISN would be terminated. The Notice set forth only four minor performance issues which did not justify the termination of ISN.

The termination of ISN, therefore, violated the provisions of the Statewide Contract and the FPO.

As a proximate result of this breach of contract, which occurred in Atlanta, Georgia, ISN has been damaged in an amount in excess of \$5 million.

## **For Fraud**

The City and its employees, particularly Commissioner Herbert L. McCall, made certain material misrepresentations and withheld material facts from ISN, concerning, inter alia, the FPO, ISN's right to choose its subcontractors, the scope of work, McCall's authority, and the termination provisions of the FPO.

At all times relevant hereto, the City and its employees, particularly McCall, knew or should have known that the material misrepresentations would be relied upon by ISN as the basis for ISN's investment of substantial resources and funds in the

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June 23, 2000

Page 5

performance of the assessment for the City. The City and its employees, particularly McCall, also knew that the withholding of material information would purposely mislead ISN to ISN's detriment.

The City and its employees, particularly McCall, made the following material misrepresentations:

- (a) That the City would be doing its Y2K work "in-house and therefore would not be employing non-City employees. And in this manner, the City would be keeping the Y2K business for the City employees.
- (b) That ISN's September and October proposals as accepted by the City constituted fixed priced contracts, thereby enabling ISN to devote the necessary resources toward the Contract.
- (c) That the City would provide proper funding under each of the Proposals as required through the issuance of FPOs.
- (d) That under ISN's Contract, it had the right to subcontract work, based on its reasonable business judgment.

# SINGER & ASSOCIATES

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June 23, 2000  
Page 6

(e) That pursuant to the FPOs, the City would pay ISN's invoices within 30 days of the invoice date.

(f) That if ISN hired 140 personnel, it would receive contract coverage as soon as it submitted its proposal in response to the SON.

(g) That the termination provisions of the Contract provided ISN the necessary security because the City would not terminate the Contract unless ISN breached the Contract to the extent that it would not be able to perform and complete the Contract and did not take advantage of the 15-day cure.

The City and its employees, particularly McCall, also omitted to inform ISN of the following material facts:

(a) That the City had no plan to utilize any City employees to perform Y2K work.

(b) That the budget as approved by the City Council provided the 13 million dollars, sufficient to fund ISN's Contract.



# SINGER & ASSOCIATES

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June 23, 2000

Page 7

(c) That if ISN did not provide to a McCall-preferred subcontractor at least 30% of the total Contract work, ISN would be terminated.

(d) That the City would treat the services under the SON as time and materials contract, in contravention of the Statewide Contract.

(e) That the use of the FPO was not only for purposes of providing the green light for ISN's services, but to attempt to unilaterally limit the City's contractual obligations.

(f) That ISN had no right to subcontract work unless it was to a preferred subcontractor.

(g) That the FPO date authorizing work to May 31, 1999 would not be honored.

(h) That the purpose for ISN submitting the SOW was to provide the City a written basis on which the City could formulate reasons for ISN's termination.

(i) That regardless of the FPO "green light", ISN was going to be terminated in favor of a preferred subcontractor.

# SINGER & ASSOCIATES

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June 23, 2000

Page 8

The City and its employees, particularly McCall, made the aforementioned material misrepresentations and failed to disclose the aforementioned material facts in connection with ISN's performance of its services with the City. Such conduct by the City was intentional and undertaken with the intent to deceive ISN.

The aforementioned misrepresentations and the omissions by the City and its employees, particularly McCall, were made so that ISN would devote significant resources to the Project. At the respective times of the above mentioned misrepresentations and withholding of material information, the City and its employees, particularly McCall, knew that:

- (a) The City had no organization in place by which City employees could perform, in-house, the Y2K work, and this was unnecessary since ISN could employ City citizens to do the work anyhow.
- (b) The defendants had no intention of fulfilling the City's obligations under the Contract, but had determined to cherry-pick certain services from each of ISN's Proposals as they thought needed.
- (c) The defendants had no intention of providing appropriate funding for the Contract and intentionally issued inadequate FPOs so that ISN would be significantly

# SINGER & ASSOCIATES

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June 23, 2000

Page 9

at risk financially, thereby making it dependent on the defendants.

(d) The defendants had no intention of allowing ISN to subcontract other than to a subcontractor on McCall's preferred list and it was not up to ISN to question the Y2K capability of the preferred subcontractors.

(e) The defendants had no intention of providing ISN any contract coverage for the 140 personnel employed in January 1999.

(f) The defendants had no intention of utilizing the termination provisions of the Contract because they knew that minor complaints did not constitute a material breach and that such minor complaints could be cured by ISN if provided the opportunity.

(g) The City had no intention of allowing ISN to subcontract other than to a subcontractor on McCall's preferred list.

(h) The City had no intention of honoring the contract coverage for the 140 personnel employed in December 1998 and January 1999 to May 31, 1999.

# SINGER & ASSOCIATES

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June 23, 2000

Page 10

(i) The City had no intention of honoring the termination provisions of the Statewide Contract.

(j) ISN's submission of its SOW was solely intended (by the City and McCall) to be used as a pretext for firing ISN.

ISN did not discover, and could not have discovered, that the aforesaid misrepresentations and omissions of material facts were false until after March 1, 1999, the date ISN was injured, in Atlanta, Georgia.

As a direct result of the conduct of the City described herein, ISN has suffered damages in an amount to be proven at trial, but not less than \$10 million dollars compensatory damages, and \$50 million dollars punitive damages.

## **For Negligent Misrepresentation**

The City failed to exercise reasonable care in obtaining and communicating accurate and complete information concerning the Y2K Project to ISN.

The City supplied to ISN the aforesaid misrepresentations and omissions in the course of their business, and the City knew that ISN would rely on such information.

The aforementioned misrepresentations and omissions by the City were intended to, and did deceive ISN, into committing substantial resources to the City's Y2K work. ISN was injured by this conduct on March 1, 1999, in Atlanta, Georgia.

# SINGER & ASSOCIATES

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June 23, 2000

Page 11

ISN justifiably and reasonably relied upon the aforementioned misrepresentations and omissions by the City.

As a direct result of the misrepresentations and omissions by the City, and ISN's justifiable and reasonable reliance thereon, ISN has incurred substantial costs and expenses.

As a result of the conduct of the City and its employees described herein, ISN has suffered damages in an amount to be proven at trial, but not less than \$5 million compensatory damages and for punitive damages against Mr. McCall.

## For Defamation

At all times hereinafter mentioned, the City knew that ISN maintained a business reputation performing Y2K work which was essential in its ability to successfully compete and be awarded additional Y2K work for other state, local, and commercial enterprises. The unlawful termination of the FPO with the City for "default" and the frivolous reasons used as a basis for default have now been published by the City either directly, or through intermediaries, to other state, local and commercial enterprises. In addition, the City had published publicly that ISN would not have been able to complete its contractual performance by May 31, 1999.

The aforementioned statements were defamatory and untrue when made and were published, continuously throughout 1999, recklessly, maliciously, and with the intent that ISN be damaged in its business reputation. ISN's business reputation has been injured.

# SINGER & ASSOCIATES

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June 23, 2000

Page 12

The place of the defamation injury is the entire United States of America, although the statements derived from Atlanta, Georgia.

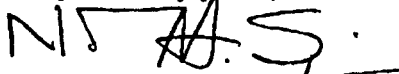
As a direct and proximate result of such statements, ISN has suffered compensatory damages in an amount to be proven at trial.

## **For Attorney's Fees**

ISN also claims that the conduct of the defendants was in bad faith, stubbornly litigious and has caused ISN unnecessary trouble and expense. Pursuant to the applicable Georgia statute, ISN is entitled to its reasonable attorney's fees which will be incurred in the matter.

Again, pursuant to O.C.G.A. 36-33-5, this letter serves as Ante Litem Notice of the claims asserted against the City of Atlanta and Herbert L. McCall by ISN.

Very sincerely yours,



Norman H. Singer, Esquire  
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